

STATE OF MICHIGAN
COURT OF APPEALS

BETTY S. MANNI and BENNIE MANNI,

Plaintiffs-Appellees,

v

RANDY A. BISHOP and VICTORIA A. BISHOP,

Defendants,

and

COLONIAL CENTRAL SAVINGS BANK, f/k/a
CENTRAL STATE SAVINGS & LOAN ASSOCIATION,

Defendant-Appellant.

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

By leave granted, appellant contends that the Macomb Circuit Court erred in denying its motion for summary disposition, based on the statute of limitations, concerning plaintiffs' claim of fraud. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs' first amended complaint alleges fraud by the bank in conjunction with a 1984 land contract, pursuant to which Betty Manni, as vendor, sold her residence to her son, Randy Bishop. She then sold her land contract vendor's interest to defendant bank for valuable consideration. Plaintiff in her complaint alleges that the land contract was procured by fraud.

The fraud alleged is that of Randy Bishop, in inducing plaintiff to sign the land contract and related documents without allowing plaintiff to read the contract. Assuming *arguendo* that this avoids application of the rule of *Sponseller v Kimball*, 246 Mich 255, 260; 224 NW 359 (1929); *Scholz v Montgomery Ward & Co*, 437 Mich 83, 92; 468 NW2d 845 (1991), the only act of fraudulent

* Circuit judge, sitting on the Court of Appeals by assignment.

concealment alleged is by Randy Bishop. Viewing the case in a light most favorable to plaintiff, and thus assuming that a six-year period of limitations applies for fraudulent misrepresentation, RJA § 5813; *Kwasny v Driessen*, 42 Mich App 442; 202 NW2d 443 (1972), in the absence of fraudulent concealment by the bank, the period of limitations is not extended by RJA § 5855. In the absence of an affirmative act of concealment by the bank, the six-year statute of limitations therefore expired in 1990, and summary disposition should have been granted. *Stoneman v Collier*, 94 Mich App 187; 288 NW2d 405 (1979); *Stevenson v Robinson*, 39 Mich 160 (1878).

Alternatively, plaintiff was aware of the alleged fraud by April 1987. Plaintiff then learned that a land contract forfeiture action concerning the property had been commenced against Bishop, and was informed that unless the balance due on the land contract were paid, she would lose her home. That, combined with the recording of the land contract documents, MCL 565.354; MSA 26.674, provided plaintiff with all the information needed to discover the alleged fraud. *Barry v Detroit Terminal R Co*, 397 Mich 226; 11 NW2d 867 (1943). Therefore, plaintiff had the later of two years from that date, or six years from the date of the original fraud, in which to commence her action. As suit was not filed until August, 1993, it is clearly barred by the statute of limitations.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Edward A. Quinnell